E: 3410-XV

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

Docket No. RHS-21-SFH-0025

RIN 0575-AD14

Direct Single Family Housing Loans and Grants Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing a final rule to amend its Direct Single Family Housing Loans and Grants (DSFHLG) programs regulation. This final rule adopts most changes as presented in the proposed rule published on November 25, 2019, in the Federal Register. This final rule also addresses public comments received by the Agency and makes some modifications based on consideration of those comments, including revisions to the refinancing provisions which will help provide relief to homeowners who have difficulty keeping their accounts current (e.g., coming off a payment moratorium), based on the availability of funds and Agency priorities.

DATES: Effective on **[**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].**

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SUPPLEMENTARY INFORMATION:

I. Background

USDA's RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

The purpose of the DSFHLG programs is to assist low- and very-low-income applicants to obtain decent, safe, and sanitary single-family housing in eligible rural areas. Well built, affordable housing is essential to the vitality of communities in rural America. RHS Programs give families and individuals the opportunity to buy, build, repair, or own safe and affordable homes located in rural America. Eligibility for these loans and grants is based on income; and the income limits are based on household size and location.

The DSFHLG programs are authorized by sections 502 and 504 of the Housing Act of 1949, as amended (42 U.S.C. 1472 and 1474). The 7 CFR part 3550 sets forth the requirements of the DSFHLG programs which includes policies regarding both loan and grant origination and servicing. The Section 502 Direct Loan Program provides 100 percent loan financing to assist low- and very low- income applicants obtain modest housing in eligible rural areas and payment assistance to increase an applicant's repayment ability. The Section 504 Loan Program provides one percent interest rate loans to very low-income homeowners in eligible rural areas to repair, improve, or modernize their home or to remove health and safety hazards. The Section 504 Grant

Program provides grants to elderly very low-income homeowners in eligible rural areas to remove health and safety hazards, or accessibility barriers from their home, often in conjunction with a section 504 loan.

Changes to the programs will increase program flexibility, allow more borrowers to access affordable loans, better align the programs with best practices and enable the programs to be more responsive to economic conditions and trends.

II. Discussion of Relevant Public Comments

The Agency invited public comments on the proposed rule, which was published on November 25, 2019, in the Federal Register (84 FR 64788). The 60-day comment period ended on January 24, 2020. A total of 28 comments were received. Commenters included non-profit housing organizations or associations representing housing providers and private citizens.

(1) Comments on the definition of modest housing (§ 3550.10 Definitions) which currently prohibits in-ground swimming pools.

The Agency received several comments on the definition of modest housing and the prohibition of in-ground swimming pools. Two commenters expressed concern that allowing for the financing of existing modest homes with in-ground swimming pools would create a financial burden on the borrower and borrowers would be unable to maintain and afford the costs of utility bills and pool treatments, which may increase foreclosures.

In contrast, there were two comments in favor of revising the modest housing definition to allow in-ground swimming pools. The commenters both stated there is a lack of affordable housing in rural areas and this amendment would open the market for families looking for an affordable home.

Agency Response: The Agency acknowledges these concerns related to the high utility costs and maintenance expenses of an in-ground swimming pool. However,

affordable housing stock is very limited in many rural areas and this unnecessary prohibition may be a barrier to homeownership for applicants and limit access to the program. The revised definition of modest housing will also promote a degree of consistency with the guaranteed SFH loan program (which has no prohibition on in-ground swimming pools). Therefore, the Agency is adopting the proposed definition of modest housing without changes.

(2) Comments on changing references to homeownership education and removing the requirement placed on State Directors to update the list of homeownership education providers annually, per § 3550.11 S*tate Director Assessment of Homeowner Education.*

The Agency received a comment that did not support the proposed rule regarding the determination of Agency preference for homeownership education formats. The commenter believes this change seems to signal a move by the Agency, now or in the future, towards a heavier emphasis on internet-enabled homeownership education.

The commenter encourages the Agency to include the addition of "accessibility to the homebuyer" and "quality of education" as additional factors used to determine Agency preference for homebuyer education formats.

Agency Response: The Agency acknowledges the benefits of in-person training but adds that remote training has many benefits as well (e.g., self-paced, available any time, no travel costs, etc.). The preference factors listed in the proposed § 3550.11(b)—availability and industry practice—are not an exclusive list and the Agency may consider other factors. Explicitly adding "accessibility to the homebuyer" or "quality of education" is unnecessary since the factors in the proposed § 3550.11(b) are not exclusive, and quality issues are also addressed in § 3550.11(c) and (d). The Agency is adopting the proposal without changes.

(3) Comments on allowing a new borrower to use new loan funds to purchase a dwelling from an existing RHS borrower (§ 3550.52 (a)).

The Agency received a comment that supports the use of new loan funds to purchase a dwelling from an existing RHS borrower since self-help housing providers have experienced borrowers having to leave the building group prior to finishing their home. With the change, processing a new loan to a new qualified borrower so they can purchase and finish the home with the building group is more straightforward than processing an assumption with a subsequent loan (if needed).

Agency Response: This revision will allow the Agency to responsibly, effectively, and fully utilize funds appropriated by Congress without the additional steps required to process and close an assumption loan and subsequent loan, thereby reducing loan application processing time. The Agency is adopting the proposal without changes.

(4) Comments on revising the packaging fee requirements (§ 3550.52(d)(6)). One commenter states the processing fee changes seem to be fair and the new process of calculating the fees seem to make more sense. The new rule will take into consideration economy changes and amount of time required in processing loans which was not previously accounted for.

One commenter does not oppose the increases in packaging fees to non-certified packagers represented in the proposed rule but wants to urge caution to the Agency when setting the new fee levels. Theoretically, despite the cap to the fee put in place by the proposed rule, the fee paid to non-certified packagers could exceed the fee paid to certified packagers who submit through an intermediary, or in a less extreme scenario, the fee for non-certified packager could approach or match the fee paid to certified packagers. In either case, the proposed rule could diminish the incentive for packagers to become certified.

Agency Response: The rule change will allow the Agency more flexibility to specify packaging fees under the certified and non-certified loan application process. The Agency is adopting the proposal with changes.

The language in § 3550.52(d)(6) will remove the restrictive $350 fee limit for non-certified packagers, which does not reflect the resources the non-certified loan packager invests in the packaging process. To address the concern regarding the fee level and ensure that the fee paid to a non-certified packager could not equal or exceed the current published fees resulting from the certified loan application packaging process, the Agency lowered the percentage and will determine a limit, not to exceed "one half percent of the national average area loan limit" for the non-certified process, rather than a maximum of one percent as was proposed.

The Agency acknowledges the concern that the increased non-certified fee may be a disincentive for packagers to become certified; however, the Agency continues to encourage loans funneled through an Agency-approved intermediary under the certified loan application packaging process by specifying these loans for priority consideration when being selected for processing. In addition, the language in § 3550.52(d)(6) will continue to state, "The Agency will determine the limit, based on factors such as the level of service provided and the prevailing cost to provide the service, and such cap will not exceed two percent of the national average area loan limit." This language allows the Agency to specify a higher limit for certified packaged loans through an intermediary. The certified packager and intermediary will share a portion of the fee, but the higher limit determined by the Agency will allow the parties to negotiate a fee structure that is advantageous to the certified packager and reflective to their experience.

(5) Comments on revising repayment ability ratio thresholds (§ 3550.53 (g) Repayment ability) to use the same ratios for both low- and very-low income applicants.

Three commenters concur with making the revised principal, interest, taxes, and insurance (PITI) consistent across income categories.

Agency Response: The Agency is adopting the proposal with changes given the portfolio's new loan delinquency trends since November 2019, which nearly doubled by October 2020. While new loan delinquency trends have gradually improved since October 2020, they still exceed November 2019 rates, which has resulted in the need for measured and gradual changes to the underwriting standards. The proposed rule change included repayment ability thresholds for both low- and very-low income applicants not to exceed thirty-five (35) percent for PITI, and forty-three (43) percent for Total Debt (TD) (current maximum thresholds are twenty-nine (29) percent PITI and forty-one (41) percent TD for very-low income applicants, and thirty-three (33) percent PITI and forty-one (41) percent TD for low-income applicants). However, the final rule change will only revise repayment ability thresholds to use the same PITI ratio of thirty-three (33) percent for both low- and very- low income applicants. The final rule retains the current forty-one (41) percent TD maximum threshold for low- and very low- income applicants. Adopting the same PITI ratio threshold for both low- and very low-income applicants will help ensure equal treatment of applicants across the income categories and improve marketability of the program.

(6) Comments on revising introductory text so that application processing priorities are applied on a regular basis, and not just during periods of insufficient funding (§ 3550.55 (c)).

One commenter does not agree that applications sent by a certified packager going through an intermediary should be fourth priority, but feels these applications should be given a higher priority and should be processed in conjunction with borrowers who are in need, veterans, or disabled, etc.

One commenter supports making the priorities for processing of applications on a continual basis rather than only during periods of insufficient funding. They are generally supportive of including intermediary loan submittals to the fourth priority pool, however, they would like to encourage self-help loan submittals be consistently prioritized and ask the full group funding to be a priority during periods of insufficient funding.

One commenter supports allowing the priority processing and funding priority at all times to avoid packaged applications from going stale while awaiting eligibility at RD offices.

Agency Response: The Agency's first, second and third loan application processing priorities are for applicants who have an especially serious need for immediate assistance and allow purchase of inventory properties to move more quickly before the property deteriorates or loses value.

The fourth priority will encourage the participation and interest of intermediaries in the SFH program application process. Intermediaries are valuable to the program by helping attract program applicants, training certified packagers, and performing quality assurance reviews of applications.

If applicants with equivalent priority status apply for assistance on the same day, applicants qualifying for a veteran's preference will receive priority processing, which complies with section 507 of the Housing Act of 1949 (42 USC 1477) which requires a preference for veterans. Taking into account statutory requirements for preferences, the Agency gives equal consideration to loan applications without regard to race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity.

Therefore, the Agency is adopting the proposal without changes.

(7) Comments on revising the requirement that the value of the site must not exceed 30 percent of the "as improved" market value of the property (§ 3550.56(b)(3)). One commenter expressed the removal of the 30 percent rule is a welcome upgrade of the regulations.

One commenter stated this change will better reflect overall market value of the subject property, not just the value of the land and should increase the availability of affordable housing in high-cost areas and throughout rural communities. Limiting the land cost, even when the overall appraised value is considered modest, has been a hinderance to the program.

Agency Response: The Agency agrees with these comments, and the program has other requirements that are better indicators of whether the property is considered modest, such as, area loan limits, appraisals, purchase agreements and construction contracts. Therefore, the Agency is adopting the proposal without changes.

(8) Comment on revising the requirement that the amount of a junior lien, when it is a grant or a forgivable affordable housing product, may not exceed the market value by more than five percent (§ 3550.59(a)(2)). One commenter supports the Agency's increases to the loan-to-value ratio for rehab loans and grants.

Agency Response: The Agency acknowledges the support. This will allow for more partnerships with nonprofits. Grants and forgivable affordable housing products often partially or completely cover the cost of rehabilitation to make the dwelling decent, safe, and sanitary, and a higher loan to value ratio may be tolerated in these instances. Therefore, the Agency is adopting the proposal without changes.

(9) *Comment on revising the requirement for title insurance and a closing agent for certain secured Section 504 loans of $7,500 or greater (§ 3550.108(b)(1)).* One commenter expressed support.

Agency Response: The Agency acknowledges the support. This will significantly reduce loan closing costs incurred by the borrowers, as well as allow the Agency greater responsiveness and flexibility to address changes to average repair costs. Therefore, the Agency is adopting the proposal without changes.

(10) *Comment on revising the Section 504 maximum loan amount of $20,000, so that the sum of all outstanding section 504 loans to one borrower and for one dwelling may not exceed an amount determined by the Agency (§ 3550.112).* One commenter expressed support.

Agency Response: The Agency acknowledges the support. This will allow the Agency greater responsiveness and flexibility to address changes to average repair costs. Therefore, the Agency is adopting the proposal without changes.

(11) *Comments on revising the payment moratorium requirements to require reamortization of each loan coming off a moratorium (§ 3550.207).* One commenter stated that two provisions in 7 CFR 3550.207 continue to impose unnecessary barriers to borrower's eligibility for a payment moratorium. The first is the prohibition on a moratorium for a loan that has been accelerated. Furthermore, the second is the requirement that the borrower's repayment income have fallen by at least 20 percent within the past 12 months.

Agency Response: The Agency acknowledges the recommendation, although the comment is speaking to eligibility for a moratorium and not the proposed reamortization for every loan post-moratorium. However, to address the comment, the Agency clarifies that every borrower whose account is accelerated is/was given written and verbal notice of all servicing actions (including moratoriums) prior to the acceleration process. All servicing actions, for which the borrower may qualify for, are discussed with the borrower in detail prior to acceleration. The Agency then allows each borrower a reasonable amount of time (at least 30 days) to apply for any and all such servicing

options. If the borrower does apply for any servicing options, the acceleration action is withdrawn until those requested servicing option(s) are reviewed and a determination on eligibility is provided to the borrower with appeal rights on all denials. In light of this process which occurs before acceleration, allowing a moratorium after acceleration would not provide any meaningful benefit. The Agency believes exploring other loss mitigation efforts after acceleration (e.g., voluntary liquidation) and requiring some type of repayment or conveyance is more helpful.

The Agency acknowledges the recommendation. The Agency will proceed with the existing language as written and will explore the recommendation of modifying the criteria in the future.

(12) *Comment stating RHS needs to update its set of loss mitigation options to incorporate industry standards developments over the past decade; in particular its lack of a flexible loan modification options allowing for interest rate reduction and loan term extension.*

Agency Response: The Agency acknowledges the recommendation. While refinancing and loan modification have some key differences there are also a number of similarities, including the ability to reduce the interest rate and extend the repayment term to create more affordable payments for the borrower. Currently, refinancing Agency debt is only permitted in accordance with § 3550.204 to allow the borrower to receive payment assistance (e.g., borrowers who were not previously eligible for payment assistance because the loan was approved before August 1, 1968, or the loan was made on above-moderate or nonprogram (NP) terms). More importantly, the Agency cannot offer loan modifications which extend the original loan term past 33 years (or 38 years in very limited circumstances) because the timeframe for the loan is established by statute at section 502(a) of the Housing Act of 1949 (42 USC 1472(a)).

While the Agency is statutorily prohibited from offering loan modifications that extend the original loan term beyond 33 years (or 38 years in very limited circumstances), the Agency may amend the refinance regulations so that a new loan term could replace the original and does make such amendment with this final rule. The refinancing option adopted with this rule change is particularly important given the large number of borrowers who will be exiting a COVID-related payment moratorium (also referred to as COVID-related forbearances). Some of these moratoria lasted over a year, and a post-moratorium reamortization agreement would not result in affordable monthly payments because the original loan term is limited by statute. In addition, the American Rescue Plan Act of 2021 provided additional budget authority which, given the critical need for flexibility in servicing direct loans, will be best directed towards refinancing and other loss mitigation options. The Agency is amending the regulation to reflect the expansion of refinancing availability (e.g., borrowers exiting a moratorium) — however such refinancing will be subject to the availability of funds and at the discretion of the Agency. In other words, while the final rule amendments will provide critical relief to borrowers in response to COVID and the Agency preserves the ability to provide such refinancing in the future, such refinancing is subject to funding availability and Agency discretion.

In addition, the Agency would like to clarify that borrowers in moratorium status are not delinquent on a nontax federal debt upon expiration of the moratorium for purposes of the Debt Collection Improvement Act (DCIA) (P.L. 104-134) and its implementing regulations at 31 CFR part 285, and that a loan may be refinanced with a new loan following a moratorium.

In consideration of comments received and industry practice, the Agency is revising § 3550.52 (c) and § 3550.201to allow for broader use of circumstances under

which RHS debt may be refinanced, subject to availability of funds and Agency priorities.

(13) *One comment related to § 3550.207(c), Resumption of scheduled payments, suggested that the Agency needs to give borrowers written notices that inform them about the Agency procedures for assessing the forgiveness of interest.*

Agency Response: The Agency acknowledges the recommendation. The Agency already has a meaningful standard in place to determine if interest accrued during the moratorium should be forgiven. Currently, all borrowers requesting a moratorium are sent a Moratorium on Payment (Fact Sheet) outlining the moratorium process, requirements, procedures, and impact on future payments. The Agency will explore expanding this document to include the standard utilized to determine when moratorium interest is forgiven. The standard is whether the borrower can afford the new, reamortized payment without forgiveness of interest. If the borrower can afford a reamortized payment without interest forgiveness, the Agency includes the moratorium interest in the re-amortization process. This standard best supports the borrower's ability to repay the loan and the Agency's fiscal responsibility to the public to carry out the program in a reasonable manner. If the borrower does not have repayment ability when the moratorium interest is included in determining the new payment amount, the moratorium interest is forgiven in the amount required to demonstrate repayment ability. As previously stated, in almost all cases the moratorium interest is forgiven prior to the re-amortization. The Agency does not make any changes in the final rule in response to this comment.

(14) *One comment specific to 7 CFR 3550.207(c), Resumption of scheduled payments, recommends that the Agency must develop meaningful objective standards for evaluating whether all or part of the interest that has accrued during the moratorium may be forgiven.*

Agency Response: The Agency acknowledges the recommendation. Currently, all borrowers requesting a moratorium are sent a Moratorium on Payment (Fact Sheet) outlining the moratorium process, requirements, procedures, and impact on future payments. The Agency will explore expanding this document to include the criteria utilized to determine when moratorium interest is forgiven. However, except for a limited number of cases with demonstrated repayment ability, the Agency does forgive all interest accrued during the moratorium period. The Agency does not make any changes in the final rule in response to this comment.

General comments on matters not within the scope of the proposed rule:

(15) *One commenter would like to see the 502 direct construction programs allow for an initial draw at closing to cover lot costs, site prep, and initial construction costs. Current regulations make it almost impossible for a 502 applicant to build.*

Agency Response: This suggestion is beyond the scope of the proposed rule but will be taken under consideration for future proposed rulemaking.

(16) *One commenter stated they are thankful for the Agency's efforts to bring the Direct and Guaranteed programs more in line with one another's regulations. A consistent issue is that the regulations of one program prevents them from deploying that product in scenarios that the other program's regulations would allow. Increasing the effectiveness of these programs is crucial for their region, where the incomes of entire communities can be depressed and where commercial lending can be difficult to access or entirely absent.*

Agency Response: The Agency acknowledges the need for consistency when appropriate; and acknowledges the need for differences based on the direct SFH programs' targeted audience (low- and very low-income) and unique features (e.g., subsidy). The Agency does not make any changes in the final rule in response to this comment.

III. Summary of Rule Changes

Outlined below is the summary of changes to the 7 CFR part 3550 regulations.

Subpart A - General

§ 3550.10 Definition.

The modest housing definition, which currently prohibits in-ground swimming pools, will be revised to allow for the financing of existing modest homes with swimming pools. Existing housing stocks are very limited in many rural areas, and this is an unnecessary prohibition to homeownership when an otherwise modest and affordable home is typical for the area but cannot be financed because of a swimming pool. The change promotes a degree of consistency with the guaranteed SFH loan program, which does not prohibit in-ground swimming pools. In-ground pools with new construction, or with dwellings that are purchased new, will still be prohibited.

The veterans' preference definition will be revised to remove obsolete information and streamline the definition by citing the definitions of a veteran or a family member of a deceased service member in 42 U.S.C. 1477.

A definition for principal residence will be added to this section. The new definition aligns with that used in the guaranteed SFH loan program and the mortgage industry: the primary residence definition will refer to the principal residence definition, and "principal residence" is defined as the home domicile physically occupied by the owner on a permanent basis (i.e., lives there for the majority of the year and is the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.)

The changes noted above are substantively the same as the proposed rule. However, the proposed rule also included two other changes which are not adopted in the final rule. First, the proposed rule included the removal of the definition of national average area loan limit, but the Agency decided to keep this definition as it used as a

benchmark for several items (e.g., packaging fees). Second, the proposed rule included a revision to the definition of the PITI ratio to include the homeowner's association (HOA) dues and other recurring housing-related assessments, but the Agency considered the matter further and determined that it cannot adopt this revision due to current automated system limitations. The Agency will explore other possible changes regarding HOA dues in the future.

§ 3550.11 State Director assessment of homeownership education.

In this section, paragraphs (a) and (b) will be revised to change references to "homeowner education" to "homeownership education" for consistency, and remove the requirement placed on State Directors to update the list of homeownership education providers annually. The Agency will require State Directors to update the list on an as-needed basis, but no less frequently than every three years. The Agency will determine preferences for education format (i.e., online, in-person, telephone) based on availability and industry practice. The Agency will publish the education format preferences in a publicly available format, such as the program handbook. These changes are adopted from the proposed rule without change and allow the Agency to be more responsive to changes in homeownership education course delivery and availability.

Subpart B – Section 502 Origination

§ 3550.52 Loan purposes.

In this section, paragraph (a) will be revised to allow a new borrower to use new loan funds to purchase a dwelling from an existing RHS borrower. The current regulation requires the new borrower to assume the existing loan. This is revised so that the Agency will determine if these transactions will be financed using an assumption of the existing RHS indebtedness or new loan funds, depending on funding levels as well as program goals and needs. This revision is adopted from the proposed rule without change and allows the Agency to responsibly, effectively, and fully utilize funds

appropriated by Congress without the additional steps required to process and close a loan assumption and subsequent new loan, thereby reducing loan application processing times.

Also, as a result of comments received on the proposed rule and additional consideration of various factors(e.g. the potential need for more flexible refinance options when budget authority and circumstances deemed appropriate by RHS exist), paragraph (c) Refinancing RHS debt will be revised so that depending on the availability of funds and program priorities as determined by RHS, an existing RHS loan may be refinanced in accordance with § 3550.201 to allow refinancing as a special servicing action including, but not limited to, § 3550.207 to allow refinancing, including subsidy recapture, at the end of a moratorium. The Agency may limit the number of direct loans made for refinancing purposes based on the availability of funds and Agency priorities on market conditions and other appropriate factors. This revision provides the Agency with more flexibility pertaining to special servicing actions to reduce the number of borrower failures.

Also, in this section, paragraph (d)(6) will be revised to allow the Agency more flexibility to specify packaging fees for the non-certified loan application process, and to ensure non-certified packaging fees reflect the level of service provided and the prevailing cost to provide the service. This revision is adopted from the proposed rule with the following changes: this final rule will establish the limit as determined by the Agency and will be no greater than one half percent of the national average area loan limit, rather than one percent as was proposed, and the initial limit in the program handbook will be $750.

For the non-certified loan packaging process, the current fee may not exceed $350, but this limit is being revised as it does not necessarily reflect the time a non-certified loan packager invests in the packaging process. The Agency will determine the

exact limit within the one-half percent threshold based on factors such as the level of service provided and the prevailing cost to provide the service and will publish the exact limit in a publicly available format such as the program handbook. For example, the current national average area loan limit is approximately $285,000, so the packaging fee for the non-certified loan packaging process could not exceed $1,425. The initial limit in the program handbook will be $750, which is the packaging fee permitted for Section 504 loan applications.

This final rule also amends this paragraph to remove the language regarding a preliminary eligibility determination to streamline the process, and to clarify that the packaging fee is paid only if the loan closes. This revision is adopted from the proposed rule without change.

§ 3550.53 Eligibility requirements.

In this section, paragraph (a) will be revised to clarify income eligibility requirements when refinancing existing RHS debt as a special servicing action, in light of the discussion above and as a change from the proposed rule. When an existing RHS loan is being refinanced as a special servicing action in the limited circumstances provided in the revised § 3550.52 and § 3550.201, the household's adjusted income must not exceed the applicable moderate-income limit for the area at the time of loan approval and closing. Currently, § 3550.53(a) requires that the household's adjusted income must not exceed the applicable low-income limit for the area at the time of loan approval and must not exceed the applicable moderate-income limit for the area at closing. This means if an existing direct borrower exceeds the low-income limit at the time of loan approval for refinance, the Agency would be unable to approve the loan which limits the borrower's ability to refinance and improve their chance of success post-moratorium. This change provides the Agency with flexibility by recognizing that holding existing borrowers and new applicants to the same standard at time of loan approval is detrimental

to the existing borrowers who are having difficulty keeping their accounts current and demonstrate that they may benefit from a refinance at more favorable rates and terms It would be harmful to the existing borrower and the Agency to deny an opportunity to refinance, and improve the affordability of the loan, simply because the borrower may exceed the low-income limit at time of approval for the refinance.

The revision of paragraph (c) and removing paragraphs (c)(1) through (3) will remove the overly restrictive primary residence requirements for military personnel and students. These requirements prohibit approving loans for active duty military applicants, unless they will be discharged within a reasonable period; and for fulltime students unless there are reasonable prospects that employment will be available in the area after graduation. Active duty military personnel and full-time students provide valuable service experience, education, and civic and financial contributions to rural areas. Providing these applicants with more opportunity to own modest, decent, safe, and sanitary homes in rural areas will strengthen the fabric of those communities. In addition, removing this overly restrictive language will improve consistency with other Federal housing programs such as the U. S. Department of Housing and Urban Development and the U. S. Department of Veterans Affairs. This revision is adopted from the proposed rule without change.

Also, in this section, paragraphs (g)(1) through (3) will be revised and paragraphs (g)(4) and (5) will be removed. The revisions will align the repayment ability ratio thresholds for both low- and very-low income applicants. The revisions are adopted from the proposed rule with the following changes: the PITI ratio for very-low will increase to thirty-three percent to align with the existing low-income PITI ratio, rather than increasing PITI to thirty-five percent for both income categories as was proposed; and the total debt (TD) ratio will remain at forty-one percent for both income categories, rather than increasing it to forty-three percent for both income categories as was proposed.

This will help to ensure equal treatment of applicants across the income categories and improve the marketability of the program, while being prudent about increasing risk. This change, in conjunction with automated underwriting technology, will address risk layers and reduce the frequent requests for PITI ratio waivers due to compensating factors.

The use of "homeowner" under this section in paragraph (i) will be revised by replacing with "homeownership" to have consistency within 7 CFR part 3550. This revision is adopted from the proposed rule without change.

§ 3550.55 Applications.

In this section, paragraph (c) introductory text and paragraphs (c)(4) and (5) will be revised to allow application processing priorities to be applied on a regular basis, and not just during periods of insufficient funding. Current regulations only trigger priorities in application processing when funding is insufficient. However, applying these priorities on a regular basis, not just during insufficient funding, will provide clear processing priorities for RHS staff. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans' preference.

The change recognizes fluctuation in RHS staff resources, and that complete applications need to be prioritized for processing, as well as for funding when funds are limited. While the goal is to determine an applicant's eligibility for the program within 30 days of receiving a complete application regardless of their priority ranking and the availability of funds, the priority ranking will direct Agency staff how to prioritize their work processes and better meet urgent needs. The amendment also gives fourth priority to applications submitted via an intermediary through the certified application packaging process outlined in § 3550.75. Currently, RHS may temporarily classify these

applications as fourth priority when determined appropriate which will make the fourth priority status permanent and applicable at all times.

The change in priority does not impact the priority of any other category and will recognize and encourage the participation and interest of intermediaries in the direct SFH program. Intermediaries are valuable to the program by helping attract program applicants, training certified packagers, and performing quality assurance reviews of applications.

Other priorities remain unchanged including existing customers who request subsequent loans to correct health and safety hazards, loans related to the sale of Real Estate Owned (REO) property or ownership transfer of an existing RHS financed property, hardships including applicants living in deficient housing for more than six months, homeowners in danger of losing property through foreclosure, applicants constructing dwellings in an approved self-help project, and applicants obtaining other funds in an approved leveraging proposal. Veterans' preference also remains a priority in accordance with 42 U.S.C. 1477. To further emphasize these priorities, the Agency will also make funding available in accordance with same priorities as application processing.

These revisions are adopted from the proposed rule without change.

§ 3550.56 Site requirements.

Under this section, make revisions in paragraph (b) and remove (b)(3) to remove the requirement that the value of the site must not exceed 30 percent of the "as improved" market value of the property. This change is consistent with the guaranteed SFH loan program, which has no site value limitation. This revision is adopted from the proposed rule without change.

§ 3550.57 Dwelling requirements.

In this section, paragraph (a) will be revised to remove the reference to in-ground swimming pools for existing housing under the Section 502 program, to align the

paragraph with the revised modest housing definition in 7 CFR 3550.10 of this rule. This revision is adopted from the proposed rule without change.

§ 3550.59 Security requirements.

In this section, paragraph (a)(2) will be revised to remove the requirement that the amount of a junior lien, when it is a grant or a forgivable affordable housing product, may not exceed the market value by more than five percent (i.e., up to a 105 percent loan to value ratio). This is an overly restrictive requirement as it relates to grants and forgivable affordable housing products as these products often partially or completely cover the cost of rehabilitation to make the dwelling decent, safe, and sanitary, and a higher loan to value ratio may be tolerated in these instances.

Beginning in FY 16, RHS initiated a pilot in a limited number of states to allow the State Office to approve leveraging arrangements where the total loan-to-value was more than the 105% limitation identified in § 3550.59(a)(2), provided:

- RHS is in the senior lien position and the RHS loan is fully secured (with allowable exceptions for the tax service fee, appraisal fee, homebuyer education and initial escrow for taxes and insurance);
- The junior lien is for an authorized loan purpose identified in § 3550.52;
- The junior lien involves a grant or forgivable affordable housing product; and
- The grant or forgivable affordable housing product comes from a recognized grant source such as a Community Development Block Grant or a HOME Investment Partnerships Program (HOME).

The pilot has been successful because it has:

- Empowered the selected State Offices to make timely decisions on loans with junior liens involving a grant or forgivable affordable housing product, and gave the

junior lien holder the discretion to determine a total loan-to-value that could be supported within their own program requirements;

- Generally improved an area's rural housing stock since the grants and forgivable affordable housing products are frequently used for rehabilitation work where the rehab cost is more than the enhanced value;
- Promoted consistency with the guaranteed SFH loan program, which states that junior liens by other parties are permitted if the junior liens do not adversely affect repayment ability or the security for the guaranteed loan; and
- Increased partnerships with nonprofits.

This final rule codifies the positive aspects of the pilot so that the advantages will apply program wide. These revisions are adopted from the proposed rule without change.

§ 3550.67 Repayment period.

In this section, paragraph (c) will be revised to allow more small Section 502 direct loans to be repaid in periods of up to ten years. The portfolio's new loan delinquency nearly doubled between November 2019 to October 2020, and while new loan delinquency trends have gradually improved since October 2020, they still exceed November 2019 rates. This resulted in the need for measured and gradual changes, therefore, the revisions are adopted from the proposed rule with the following change: the threshold for determining a small loan as determined by the Agency will not exceed eight percent of the national average area loan limit, rather than ten percent as was proposed. The eight percent parameter provides a threshold that meets the Agency's current practice and gives the Agency flexibility to increase the unsecured loan level within a reasonable amount in the future.

The current regulation states that only loans of $2,500 or less must not have a repayment period exceeding ten years. In practice, loans of less than $7,500 are

generally termed for ten years or less so that the loan can be unsecured (i.e., no mortgage or deed of trust is required) in accordance with the program's guidance.

This revision provides the Agency flexibility in setting the dollar threshold for smaller loans which may have a repayment period that does not exceed ten years. This threshold will be determined by the Agency and published in a publicly available format and will not exceed eight percent of the national average area loan limit. For example, the current national average area loan limit is approximately $285,000, so only loans of $22,800 or less may not have a repayment period exceeding ten years. During Fiscal Years 2019 and 2020, there were approximately 67 loans for less than $23,000, with an average loan amount of $12,240. Of this subset of loans, there was a 22.5 percent increase in the average loan amount from FY 19 ($10,847) to FY 20 ($13,293). This highlights the need for additional flexibility as ever-increasing purchase and repair costs naturally increase what constitutes a “small” loan. The Agency will determine the threshold based on factors such as the Agency’s level of tolerance for unsecured loans and the performance and collection of unsecured loans in the Agency’s portfolio.

Subpart C – Section 504 Origination and Section 306 Water and Waste Disposal Grants

§ 3550.102 Grant and loan purposes.

In light of the discussion above and as a change from the proposed rule, the revision of paragraph (e)(5) will permit refinancing of existing 504 loans, depending on the availability of funds and program priorities as determined by RHS, in accordance with the revised § 3550.201 to allow refinancing as a special servicing action to reduce the number of borrower failures that result in liquidation including, but not limited to, § 3550.207 to allow refinancing at the end of a moratorium. The Agency may limit the number of direct loans made for refinancing purposes based on the availability of funds

and Agency priorities. market conditions and other appropriate factors. This revision provides the Agency with more flexibility pertaining to loss mitigation measures.

§ 3550.103 Eligibility requirements.

Under this section, paragraph (e) will be revised to remove the language in regarding a waiver of the requirement that applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. The regulation currently provides that this requirement may be waived if the household is experiencing medical expenses more than three percent of the household's income. The revision removes the medical expense and waiver language. The authority to waive regulations on a case-by-case basis already exists in § 3550.8, making the medical expense and waiver language in § 3550.103(e) unnecessary. Furthermore, limiting the waiver of the requirement to only those instances in which medical expenses exceed 3 percent of the household's income is overly restrictive. This revision is adopted from the proposed rule without change.

§ 3550.104 Applications.

Paragraph (c) will be revised by replacing "veterans preference" with "veterans' preference." This is a grammatical correction only and is adopted from the proposed rule without change.

§ 3550.106 Dwelling requirements.

Paragraph (a) will be revised to remove the reference to in-ground swimming pools for the Section 504 program, to align the paragraph with the revised modest housing definition in 7 CFR 3550.10 of this rule. This revision is adopted from the proposed rule without change.

§ 3550.108 Security requirements (loans only).

Paragraph (b)(1) will be revised to modify the requirement for title insurance and a closing agent for certain secured Section 504 loans of $7,500 and greater. Currently,

Section 504 loans less than $7,500 may be closed by the Agency without title insurance and a closing agent; however, loans of $7,500 and greater require title insurance and must be closed by a closing agent.

The cost for title insurance and a closing agent can be unaffordable for very-low income borrowers with loans of $7,500 and greater or can potentially decrease the amount of loan funds available for needed repairs or improvements. This revision removes the specific dollar threshold for loans which require title insurance and a closing agent. Loans where the total section 504 indebtedness does not exceed an amount determined by the Agency, but no greater than 20 percent of the national average area loan limit, may be closed by the Agency without title insurance or a closing agent. Using this parameter gives flexibility to adjust for inflation over time and still results in a loan amount that can be closed by the Agency with minimal risk. The Agency will determine the maximum amount based on factors such as average costs for title insurance and closing agents compared to average housing repair costs and publish the specific threshold in a publicly available format such as the program handbook. This revision will significantly reduce loan closing costs incurred by the borrowers, by allowing more loans to be closed by the Rural Development office. This revision will also allow for responsiveness and adjustments based on inflationary changes and is adopted from the proposed rule without change.

§ 3550.112 Maximum loan and grant.

The revision of paragraph (a) will revise the Section 504 maximum loan amount of $20,000, so that the sum of all outstanding section 504 loans to one borrower and for one dwelling may not exceed an amount determined by the Agency, but not greater than twenty percent of the national average area loan limit. This revision is adopted from the proposed rule without change. An initial limit of $40,000 will be used in the program handbook.

The Agency will determine the maximum amount based on factors such as average loan amount and repair costs. Using this parameter gives flexibility to adjust for inflation over time and still results in a total outstanding loan amount that can be acceptable to the Agency. A corresponding change will also be made to § 3550.112(a)(1) to address maximum loan amounts for transferees who assume Section 504 loans and wish to obtain a subsequent loan. The revision allows the Agency greater responsiveness and flexibility to address changes to average repair costs. The current national average area loan limit is $285,000 so the maximum loan assistance could not exceed $57,000; as stated above, an initial limit of $40,000 will be used in the program handbook. The $40,000 limit is currently used under a pilot.

The revision of paragraph (c) will remove the lifetime maximum assistance of $7,500 for a Section 504 grant and replace with a maximum lifetime limit not to exceed ten percent of the national average area loan limit for any one household or one dwelling versus the five percent outlined in the proposed rule. Since the publication of the proposed rule in November 2019, there have been major shifts in the economy. According the National Association of Home Builder's May 2021 survey, building materials costs have on average increased 26.1 percent over the prior 12 months and builders are widely experiencing shortages in material. The higher percentage is needed given current and future conditions. An initial limit of $10,000 (which is currently used under a pilot) will be used in the program handbook. Limiting this to any one household will eliminate applicants from applying separately and receiving double grant assistance per household. In addition to changing the percent used, the statement "no grant can be awarded when the household has repayment ability for a loan" that appeared in the proposed rule was removed. It was determined to be confusing given the allowance for loan/grant combinations. This revision was adopted from the proposed rule, with the changes noted above.

§ 3550.113 Rates and terms (loans only).

The revision of paragraph (b) will revise the Section 504 loan term requirements to specify that the loan term will be 20 years. This will make 504 loan terms consistent, increase affordability, and maximize repayment ability. This revision is adopted from the proposed rule without change.

Subpart D – Regular Servicing

§ 3550.162 Recapture.

Under this section, revising the recapture requirements in paragraph (b) to specify when Principal Reduction Attributable to Subsidy (PRAS) is, or is not, collected. The direct loan program provides payment assistance (subsidy), which may include PRAS, to help borrowers meet their monthly mortgage loan obligations. At the time of loan payoff, borrowers are required to repay all or a portion of the subsidy they received over the life of the loan. This is known as subsidy recapture. The amount of subsidy recapture to be repaid is based on the borrower's subsidy repayment agreement and a calculation that determines the amount of value appreciation (equity) the borrower has in the property at the time of payoff. The changes to the regulation clarify when PRAS is collected and is consistent with the terms of the subsidy repayment agreements. In cases where the borrower has no equity in the property based on the recapture calculation, PRAS will not be collected. There are no changes to the current subsidy recapture calculation. These revisions are adopted from the proposed rule without change.

Subpart E – Special Servicing

§ 3550.201 Purpose of special servicing actions.

In light of the discussion above and as a change from the proposed rule, this paragraph will be revised to include refinancing of RHS debt as a special servicing action to reduce the number of borrower failures that result in liquidation. Borrowers who have difficulty keeping their accounts current may be eligible to refinance as a special servicing option

(e.g., exiting a moratorium, reamortization or other options are unaffordable). As with other special servicing options, the refinance special servicing option will be unavailable for accelerated accounts. The refinancing option adopted with this rule change is particularly important given the large number of borrowers who will be exiting a COVID-related payment moratorium (also referred to as COVID-related forbearances). Some of these moratoria lasted over a year, and a post-moratorium reamortization agreement would not result in affordable monthly payments because the original loan term is limited by statute. In addition, the American Rescue Plan Act of 2021 provided additional budget authority which, given the critical need for flexibility in servicing direct loans, will be best directed towards refinancing and other loss mitigation options. The Agency is amending the regulation to reflect the expansion of refinancing availability as a special servicing action to help make payments more affordable (e.g., following a moratorium or reamortization) — however such refinancing will be subject to the availability of funds and at the discretion of the Agency. In other words, while the final rule amendments will provide critical relief to borrower in response to COVID and the Agency preserves the ability to provide such refinancing in the future, such refinancing is not a given due to factors such as budget authority and other Agency priorities.

§ 3550.207 Payment moratorium.

Under this section, revising the payment moratorium requirements to require reamortization of each loan coming off a moratorium. Currently, the regulation stipulates that at the end of a moratorium borrowers are to be provided a re-amortization if the Agency determines they can resume making scheduled payments, based on financial information provided by the borrower. Often these borrowers lack demonstrable repayment ability for the new installment, which then requires the Agency to liquidate the account. However, it should not be unexpected that a borrower may have difficulty demonstrating repayment ability at the end of a moratorium. The very purpose of the

moratorium is to provide temporary payment relief to borrowers who have experienced circumstances beyond their control such as the loss of at least 20 percent of their income, unexpected expenses from illness, injury, death in the family, etc.

In July 2010, due to the recession, the Administrator of RHS issued a decision memorandum approving the re-amortization of all accounts following a moratorium; this decision has been supported by subsequent Administrators. Historical data has shown that borrowers whose loans are re-amortized after a moratorium, regardless of repayment ability, have no greater risk of becoming delinquent when compared to non-moratorium borrowers whose loans were re-amortized.

When comparing the borrower's repayment history 18 months after the moratorium/re-amortization, 81.5 percent of the borrowers made their required monthly payment and avoided foreclosure, making this the best option for the borrower and the Agency. Whereas, if the borrower's repayment ability would have been considered, a large percentage of these successful borrowers would have lost their home without being given a chance to demonstrate their ability to repay their mortgage.

This revision will require re-amortization after a moratorium regardless of repayment ability, which will reduce foreclosures and better serve borrowers. The Agency is also clarifying that all or part of the interest accrued during the moratorium may be forgiven in an amount that balances affordability to the borrower and serving the best interest of the government. These revisions are adopted from the proposed rule without change.

Subpart F – Post-Servicing Actions

§ 3550.251 Property management and disposition.

In this section, revising paragraphs (c) and (d) to remove obsolete references and clarify the process and priorities in the sale or lease of REO properties. The revision also

clarifies the sale or lease process and reservation periods for priority buyers to comply with 42 U.S.C. 11408a.

Under 42 U.S.C. 11408a, RHS must lease or sell program and nonprogram inventory properties to public agencies and nonprofits to provide transitional housing and to provide turnkey housing for tenants of such transitional housing and for eligible families. However, first priority is the sale of REO properties to Section 502 borrowers.

The changes will further align § 3550.251(c) and (d) with 42 U.S.C. 11408a concerning the priority of the sale or lease of REO properties to eligible borrowers and to nonprofit organizations or public bodies providing transitional housing.

This action will incorporate references to 42 U.S.C. 11408a and its more detailed instruction on transitional housing, lease and purchase procedures, and the employment or participation of homeless (or formerly homeless) individuals for the property being leased or acquired. To provide the maximum flexibility, the Agency will reserve program REO properties for no less than 30 days for sale to program eligible borrowers, as well as for sale or lease to a public agency or nonprofit organization for transitional and turnkey housing purposes. Upon receipt of written notification from a public agency or nonprofit organization seeking to purchase or lease REO property, the Agency shall withdraw the property from the market for not more than 30 days for the purpose of negotiations. If negotiations are unsuccessful, the REO property will be relisted and sold in the best interest of the Government.

The expected result of this rulemaking is to allow the maximum use of the REO properties and foster collaboration in working to address a national shortage of transitional housing. These revisions are adopted from the proposed rule without change.

IV. Regulatory Information

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended,

authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866

The Office of Management and Budget (OMB) has designated this final rule as not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients, nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program/activity is not subject to the provisions of Executive Order 12372,

which require intergovernmental consultation with State and local officials. (See the document related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This Executive Order imposes requirements in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with the Agency on this rule, they are encouraged to contact USDA's Office of Tribal Relations or the Agency's Native American Coordinator at: AIAN@usda.gov to request such a consultation.

Programs Affected

The following programs, which are listed in the Catalog of Federal Domestic Assistance, are affected by this final rule:

Number 10.410, Very Low to Moderate Income Housing Loans (specifically the section 502 direct and guaranteed loans), and Number 10.417, Very Low-Income Housing Repair Loans and Grants (specifically the section 504 direct loans and grants).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection activities associated with this rule are covered under OMB Number: 0575-0172. This final rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, 44 U.S.C. 3601 *et seq*., to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

V. Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) Mail: U.S. Department of Agriculture Office
of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW.,
Washington, D.C. 20250-9410;

(2) Fax: (202)690-7442; or

(3) Email: OAC@usda.gov.

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List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs-housing and community development, Housing, Loan programs-housing and community development, low- and moderate-income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, chapter XXXV, title 7 of the Code of Federal Regulations, is amended as follows:

PART 3550 — DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A — General

2. Section 3550.10 is amended by revising the definition of "Modest housing", adding a definition for "Principal residence" in alphabetical order, and revising the definition of "Veterans' preference" to read as follows:

§ 3550.10 Definitions.

* * * * *

Modest housing. A property that is considered modest for the area, has a market

value that does not exceed the applicable maximum loan limit as established by RHS in accordance with § 3550.63, and is not designed for income producing activities. Existing properties with in-ground pools may be considered modest; however, in-ground pools with new construction or with properties which are purchased new are prohibited.

* * * * *

Principal residence. The home domicile physically occupied by the owner on a permanent basis (i.e., lives there for the majority of the year and is the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.).

* * * * *

Veterans' preference. A preference extended to a veteran applying for a loan or grant under this part, or the families of deceased servicemen, who meet the criteria in 42 U.S.C. 1477.

3. In § 3550.11, revise paragraphs (a) and (b) to read as follows:

§ 3550.11 State Director assessment of homeownership education.

(a) State Directors will assess the availability of certified homeownership education in their respective states on an as-needed basis but at a minimum every three years and maintain an updated listing of providers and their reasonable costs.

(b) The order of preference for homeownership education formats will be determined by the Agency based on factors such as industry practice and availability.

* * * * *

Subpart B - Section 502 Origination

4. In § 3550.52, revise paragraphs (a), (c), and (d)(6) to read as follows:

§ 3550.52 Loan Purposes.

* * * * *

(a) *Purchases from existing RHS borrowers*. To purchase a property currently financed by an RHS loan, the new borrower will assume the existing RHS indebtedness or receive new loan funds as determined by the Agency. The Agency will periodically determine whether assumptions or new loans are appropriate on a program wide basis based on the best interest of the government, taking into account factors such as funding availability and staff resources. Regardless of the method, loan funds may be used for eligible costs as defined in paragraph (d) of this section or to permit a remaining borrower to purchase the equity of a departing co-borrower.

* * * * *

(c) *Refinancing RHS debt.* An existing RHS loan may be refinanced in accordance with § 3550.204 to allow the borrower to receive payment assistance. In addition, depending on the availability of funds and program priorities as determined by RHS, an existing RHS loan and the related subsidy recapture may be refinanced as allowed under § 3550.201.

* * * * *

(d) * * *

(6) Packaging fees resulting from the certified loan application packaging process outlined in § 3550.75. The Agency will determine the limit, based on factors such as the level of service provided and the prevailing cost to provide the service, and such cap will not exceed two percent of the national average area loan limit. Nominal packaging fees not resulting from the certified loan application process are an eligible cost provided the fee does not exceed a limit determined by the Agency based on the level and cost of service factors, but no greater than one half percent of the national average area loan limit; the loan application packager is a nonprofit, tax exempt partner that received an exception to all or part of the requirements outlined in § 3550.75 from the applicable Rural Development State Director; and the packager gathers and submits

the information needed for the Agency to determine if the applicant is eligible along with a fully completed and signed uniform residential loan application.

* * * * *

5. In § 3550.53, revise paragraphs (a), (c), (g), and (i) to read as follows:

§ 3550.53 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable low-income limit for the area, and at closing, must not exceed the applicable moderate-income limit for the area (see § 3550.54). When an existing RHS loan is being refinanced as a special servicing action under § 3550.201), the household's adjusted income must not exceed the applicable moderate-income limit for the area at the time of loan approval and closing.

* * * * *

(c) *Principal residence*. Applicants must agree to and have the ability to occupy the dwelling in accordance with the definition found in § 3550.10. If the dwelling is being constructed or renovated, an adult member of the household must be available to make inspections and authorize progress payments as the dwelling is constructed.

* * * * *

(g) *Repayment ability*. Repayment ability means applicants must demonstrate adequate and dependably available income. The determination of income dependability will include consideration of the applicant's history of annual income.

(1) An applicant is considered to have repayment ability when the monthly amount required for payment of principal, interest, taxes, and insurance (PITI), does not exceed thirty-three percent of the applicant's repayment income (PITI ratio). In addition, the monthly amount required to pay PITI plus recurring monthly debts must not exceed forty-one percent of the applicant's repayment income (total debt ratio).

(2) If the applicant's PITI ratio and total debt ratio exceed the percentages specified by the Agency by a minimal amount, compensating factors may be considered. Examples of compensating factors include payment history (if applicant has historically paid a greater share of income for housing with the same income and debt level), savings history, job prospects, and adjustments for nontaxable income.

(3) If an applicant does not meet the repayment ability requirements in this paragraph (g), the applicant can have another party join the application as a cosigner, have other household members join the application, or both.

* * * * *

(i) *Homeownership education.* Applicants who are first-time homebuyers must agree to provide documentation, in the form of a completion certificate or letter from the provider, that a homeownership education course from a certified provider under § 3550.11 has been successfully completed as defined by the provider. Requests for exceptions to the homeownership education requirement in this paragraph (i) will be reviewed and granted on an individual case-by-case basis. The State Director may grant an exception to the homeownership education requirement for individuals in geographic areas within the State where the State Director verifies that certified homeownership education is not reasonably available in the local area in any of the formats listed in §3550.11(b). Whether such homeownership education is reasonably available will be determined based on factors including, but not limited to: Distance, travel time, geographic obstacles, and cost. On a case-by-case basis, the State Director also may grant an exception, provided the applicant borrower documents a special need, such as a disability, that would unduly impede completing a homeownership course in a reasonably available format.

6. In § 3550.55, revise paragraphs (c) introductory text and (c)(4) and (5) to read as follows:

§ 3550.55 Applications.

* * * * *

(c) *Selection for processing and funding*. Applications will be selected for processing using the priorities specified in this paragraph (c). Within priority categories, applications will be processed in the order that the completed applications are received. In the case of applications with equivalent priority status that are received on the same day, preference will first be extended to applicants qualifying for a veterans' preference. When funds are limited and eligible applicants will be placed on the waiting list, the priorities specified in this paragraph (c) will be used to determine the selection of applications for available funds.

* * * * *

(4) Fourth priority will be given to applicants seeking loans for the construction of dwellings in an RHS-approved Mutual Self-Help project, loan application packages funneled through an Agency-approved intermediary under the certified loan application packaging process, and loans that will leverage funding or financing from other sources at a level published in the program handbook.

(5) Applications from applicants who do not qualify for priority consideration in paragraph (c)(1), (2), (3), or (4) of this section will be selected for processing after all applications with priority status have been processed.

* * * * *

7. In § 3550.56, revise paragraphs (b)(1) and (2) and remove paragraph (b)(3).

The revisions read as follows:

§ 3550.56 Site requirements.

* * * * *

(b) * * *

(1) The site must not be large enough to subdivide into more than one site under existing local zoning ordinances and

(2) The site must not include farm service buildings, though small outbuildings such as a storage shed may be included.

8. In § 3550.57, revise paragraph (a) introductory text to read as follows:

§ 3550.57 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, or have a market value in excess of the applicable maximum area loan limit, in accordance with § 3550.63, unless RHS authorizes an exception under this paragraph (a). An exception may be granted on a case-by-case basis to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need. Existing properties with in-ground swimming pools may be considered modest; however, in-ground swimming pools with new construction or with properties which are purchased new are prohibited.

* * * * *

9. In § 3550.59, revise paragraph (a)(2) to read as follows:

§ 3550.59 Security requirements.

* * * * *

(a) * * *

(2) No liens prior to the RHS mortgage exist at the time of closing and no junior liens are likely to be taken immediately after or at the time of closing, unless the other liens are taken as part of a leveraging strategy or the RHS loan is essential for repairs. Any lien senior to the RHS lien must secure an affordable non-RHS loan. Liens junior to the RHS lien may be allowed at loan closing if the junior lien will not interfere

with the purpose or repayment of the RHS loan. When the junior lien involves a grant or a forgivable affordable housing product, the total debt may exceed the market value provided:

(i) The RHS loan is fully secured (with allowable exceptions for the tax service fee, appraisal fee, homebuyer education and initial escrow for taxes and insurance);

(ii) The junior lien is for an authorized loan purpose identified in § 3550.52; and

(iii) The grant or forgivable affordable housing product comes from a recognized grant source such as a Community Development Block Grant or a HOME Investment Partnerships Program (HOME).

* * * * *

10. In § 3550.67, revise paragraph (c) to read as follows:

§ 3550.67 Repayment period.

* * * * *

(c) Ten years for loans not exceeding an amount determined by the Agency based on factors such as the performance of unsecured loans in the Agency's portfolio and the Agency's budgetary needs, but not to exceed eight percent of the national average area loan limit.

* * * * *

Subpart C - Section 504 Origination and Section 306C Water and Waste Disposal Grants

11. In § 3550.102, revise paragraph (e)(5) to read as follows:

§ 3550.102 Grant and loan purposes.

* * * * *

(e) * * *

(5) Refinance any debt or obligation of the applicant incurred before the date of application except for the installation and assessment costs of utilities; or subject to the availability of funds and program priorities as determined by RHS, refinance of an existing RHS loan in accordance with § 3550.201 as a special servicing option, including but not limited to refinancing at the end of a moratorium.

* * * * *

12. In § 3550.103, revise paragraph (e) to read as follows:

§ 3550.103 Eligibility requirements.

* * * * *

(e) *Need and use of personal resources.* Applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. Elderly families must use any net family assets in excess of $20,000 to reduce their section 504 request. Non-elderly families must use any net family assets in excess of $15,000 to reduce their section 504 request. Applicants may contribute assets in excess of the aforementioned amounts to further reduce their request for assistance. The definition of assets for the purpose of this paragraph (e) is net family assets as described in § 3550.54, less the value of the dwelling and a minimum adequate site.

* * * * *

13. In § 3550.104, revise paragraph (c) to read as follows:

§ 3550.104 Applications.

* * * * *

(c) *Processing priorities.* When funding is not sufficient to serve all eligible applicants, applications for assistance to remove health and safety hazards will receive priority for funding. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a

veterans' preference. After selection for processing, requests for assistance are funded on a first-come, first-served basis.

14. In §3550.106, revise paragraph (a) to read as follows:

§3550.106 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, or have a market value in excess of the applicable maximum area loan limit, in accordance with § 3550.63.

* * * * *

15. In § 3550.108, revise paragraph (b)(1) to read as follows:

§ 3550.108 Security requirements (loans only).

* * * * *

(b) * * *

(1) Loans where the total section 504 indebtedness does not exceed an amount determined by the Agency based on factors such as average costs for title insurance and closing agents compared to average housing repair costs, but no greater than twenty percent of the national average area loan limit.

* * * * *

16. In § 3550.112, revise paragraphs (a) introductory text, (a)(1), and (c) to read as follows:

§ 3550.112 Maximum loan and grant.

(a) *Maximum loan permitted*. The sum of all outstanding section 504 loans to one household for one dwelling may not exceed an amount determined by the Agency based on factors such as average loan amounts and repair costs, but no greater than twenty percent of the national average area loan limit.

(1) Transferees who have assumed a section 504 loan and wish to obtain a subsequent section 504 loan are limited to the difference between the unpaid principal balance of the debt assumed and the maximum loan permitted.

* * * * *

(c) *Maximum grant.* The lifetime total of the grant assistance to any one household or one dwelling may not exceed ten percent of the national average area loan limit.

17. In § 3550.113, revise paragraph (b) to read as follows:

§ 3550.113 Rates and terms (loans only).

* * * * *

(b) *Loan term.* The repayment period for all section 504 loans will be 20 years.

Subpart D – Regular Servicing

18. In § 3550.162, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 3550.162 Recapture.

* * * * *

(b) * * *

(1) *General*. The amount to be recaptured is determined by a calculation specified in the borrower's subsidy repayment agreement and is based on the borrower's equity in the property at the time of loan pay off. If there is no equity based on the recapture calculation, the amount of principal reduction attributed to subsidy is not collected. The recapture calculation includes the amount of principal reduction attributed to subsidy plus the lesser of:

* * * * *

(ii) A portion of the value appreciation of the property subject to recapture. In order for the value appreciation to be calculated, the borrower will provide a current appraisal, including an appraisal for any capital improvements, or arm's length sales contract as evidence of market value upon Agency request. Appraisals must meet Agency standards under § 3550.62.

* * * * *

Subpart E – Special Servicing

19. Revise § 3550.201 to read as follows:

§ 3550.201 Purpose of special servicing actions.

The Rural Housing Service (RHS) may approve special servicing actions to reduce the number of borrower failures that result in liquidation. Borrowers who have difficulty keeping their accounts current may be eligible for one or more available servicing options including: payment assistance; delinquency workout agreements that temporarily modify payment terms; protective advances of funds for taxes, insurance, and other approved costs; and payment moratoriums. Subject to the availability of funds and Agency priorities, refinancing may be available as a special servicing option in accordance with § 3550.52(c).

20. In § 3550.207, revise paragraphs (b)(2) and (c) and remove paragraph (d).

The revisions read as follows:

§ 3550.207 Payment moratorium.

* * * * *

(b) * * *

(2) At least 30 days before the moratorium is scheduled to expire, the borrower must provide financial information needed to process the re-amortization of the loan(s).

(c) *Resumption of scheduled payments*. When the moratorium expires or is cancelled, the loan will be re-amortized to include the amount deferred during the moratorium and the borrower will be required to escrow. If the new monthly payment, after consideration of the maximum amount of payment subsidy available to the borrower, exceeds the borrower's repayment ability, all or part of the interest that has accrued during the moratorium may be forgiven so that the new monthly payment optimizes both affordability to the borrower as well as the best interest of the Government.

Subpart F – Post-Servicing Actions

21. In § 3550.251:

a. Revise paragraphs (c)(4) and (5);

b. Remove paragraph (c)(6);

c. Revise paragraph (d)(2);

d. Remove paragraph (d)(3);

e. Redesignate paragraph (d)(4) as (d)(3).

The revisions read as follows:

§ 3550.251 Property management and disposition.

* * * * *

(c) * * *

(4) *Sale of program REO properties*. For no less than 30 days after a program REO property is listed for sale, the property will be reserved for sale to eligible direct or guaranteed single family housing very-low, low- or moderate income applicants under this part or part 3555 of this title, and for sale or lease to nonprofit organizations or public bodies providing transitional housing and turnkey housing for tenants of such transitional housing in accordance with 42 U.S.C. 11408a. Offers from eligible direct or guaranteed single family housing applicants are evaluated at the listed price, not the offering price.

Priority of offers received the same day from eligible direct or guaranteed single family housing applicants will be given to applicants qualifying for veterans' preference, cash offers from highest to lowest, then credit offers from highest to lowest. Acceptable offers of equal priority received on the same business day are selected by lot. After the expiration of a reservation period, REO properties can be bought by any buyer.

(5) *Sale by sealed bid or auction.* RHS may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government.

(d) * * *

(2) RHS shall follow the standards and procedures in 42 U.S.C. 11408a for the sale or lease of an REO property to a public agency or nonprofit organization. The terms of the sale and lease, and the entity seeking to purchase or lease the REO property, must meet the requirements in 42 U.S.C. 11408a.

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